United States General Accounting Office
Washington, DC 20548

Office of the General Counsel

B-284610

March 3, 2000

The Honorable Bob Franks
Chairman
Subcommittee on Economic Development, Public Buildings,
Hazardous Materials and Pipeline Transportation
Committee on Transportation and Infrastructure
House of Representatives

Subject: GAO's Authority to Audit Capitol Concerts

Dear Mr. Chairman:

This responds to your joint January 27, 2000, request[1] for an opinion concerning the authority of the General Accounting Office (GAO) to audit private funds used by a private organization in connection with the annual Capitol concert series. For the reasons discussed below, we believe 40 U.S.C. § 193m-1 authorizes GAO to audit the private funds a private organization uses to perform services or conduct activities on United States Capitol grounds.

Background

Congress authorizes the National Park Service (NPS) to annually sponsor a series of National Symphony Orchestra (NSO) concerts on Capitol grounds under conditions provided by the Architect of the Capitol. H. Cong. Res. 133, May 21, 1981. NPS awards a grant to NSO to perform the concert series, comprised of the Memorial Day, July 4th, and Labor Day concerts. To televise the Memorial Day and July 4th concerts, NSO enters into an agreement with a concert producer, Capital Concerts, Inc.[2] The producer's responsibilities include television production; engaging the conductor,

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[1] We are also providing this response to Bob Wise, Ranking Democratic Member of the Subcommittee on Economic Development, Public Buildings, Hazardous Materials and Pipeline Transportation, who joined you in this request.

[2] Capital Concerts, Inc. is a non-profit corporation incorporated in the District of Columbia and is exempt from tax under section 501(c)(3) of the Internal Revenue Code.

artists, technical staff; audio-visual reproduction; and specified logistical arrangements. The concert series is financed with both appropriated and private funds, including donations raised and used by the producer.

The Senate Majority and Minority Leaders and the Chairman and Ranking Member of the Senate Committee on Rules and Administration asked GAO to audit the costs and related sources of funding for the 1999 Capitol concert series held on Capitol grounds. Specifically, we were asked to verify the receipt and use of funds derived from concert-related federal grants and private fund raising activities to pay for producing, staging, and broadcasting the three concerts. To satisfy the request, we have begun our review under 40 U.S.C. § 193m-1, which authorizes GAO to audit private organizations performing services or conducting activities on the United States Capitol grounds.

Discussion

A number of statutes provide GAO with broad audit authority. Our enabling legislation, the Budget and Accounting Act, 1921, authorizes the Comptroller General to investigate all matters relating to the receipt, disbursement, and use of public money. 31 U.S.C. § 712. Later, in the most important budget and accounting legislation since 1921, the Accounting and Auditing Act of 1950, the Congress specifically authorized GAO to audit the financial transactions of executive, legislative and judicial agencies. 31 U.S.C. § 3523. Subsequently, Congress endorsed GAO's evolving program evaluation work by passing the Legislative Reorganization Act of 1970, which specifically authorized the Comptroller General to review and evaluate the results of government programs. 31 U.S.C. § 717.

During the floor debate on the Legislative Reorganization Act of 1970, Representative Dingell offered an amendment that was adopted and eventually became section 451, now codified at 40 U.S.C. § 193m-1. Section 193m-1 provides that

> "[a]ny private organization, except political parties and committees constituted for election of Federal officials, whether or not organized for profit and whether or not any of its income inures to the benefit of any person, which performs services or conducts activities in or on the United States Capitol Buildings or Grounds, . . ., shall be subject, for each year in which it performs such services or conducts such activities, to a special audit of its accounts which shall be conducted by the General Accounting Office."

The language of section 193m-1 is very broad. It refers to private organizations without concern over whether the organization is for profit or generates income for the benefit of a person. Section 193m-1 describes the covered activity as when a private organization "performs services or conducts activities in or on the United States Capitol Buildings or Grounds" without offering any limitations on the type of services or activities covered. The section then provides that for each year the

private organization performs such services or conducts such activities, the authorized audit is of the private organization's accounts, not just the federal funds the organization receives.

Consistent with the broad language of section 193m-1, its legislative history reflects an objective to provide broad audit coverage of private organizations performing services or conducting activities on Capitol grounds that up to that point received no audit, no public scrutiny, and no overview by any arm of the Congress. 116 Cong. Rec. 32219 (1970) (statement of Rep. Dingell). "These businesses run all the way from contract businesses for the providing of services to the Architect of the Capitol to the construction of very large office buildings. They involve the operation of services upon the Capitol Grounds like lunchrooms, and they include concessionaires involving the providing of food services in the other body. They involve the operation of car washing services and other things in the garages in the House of Representatives and of the Senate." 116 Cong. Rec. 32218 (1970) (statement of Rep. Dingell). The legislative history reflects a congressional belief that "these services and businesses on Capitol grounds should be open to the public" and that Congress "should know who conducts this business and how, . . . [and] what the expenses are and what the contracts are and how the contracts are derived, and carried out." 116 Cong. Rec. 32218 (1970) (statement of Rep. Dingell).

If a statute's language reflects the unambiguously expressed intent of Congress, it must be given effect. Chevron U.S.A. Inc v. Natural Resources Defense Council, Inc., 486 U.S. 837, 842 (1984). If, on the other hand, the statute is ambiguous on a specific issue, deference must be given to the interpretation made by the agency charged with its administration, Chevron, 486 U.S. at 843-844, particularly when the agency's construction of the statute was contemporaneous with its passage, Udall v. Tallman, 380 U.S. 1, 16 (1965), and that interpretation has been consistently applied over a long period of time, United States v. Clark, 454 U.S. 555, 565 (1982). Under either of these standards of statutory construction, we believe Capitol Concerts's participation in the two concerts on Capitol grounds falls within the scope of 40 U.S.C. § 193m-1.

Capitol Concerts is a private organization, the type of entity section 193m-1 covers. When Capitol Concerts engages in significant activities in producing the concerts, including but not limited to staging and broadcasting the concerts, it "performs services or conducts activities in or on the United States Capitol Buildings or Grounds." Nothing in the statute or its legislative history suggests that the private funds raised and used by Capitol Concerts are outside the audit authorized by section 193m-1. In fact, the very activities discussed in the legislative history involve private funds. Further, soon after enactment of section 193m-1 and for many years thereafter, we conducted audits of private organizations and included private funds in the audit. For example, our audits of the printing clerks of the House of Representatives were actually audits of incorporated printing firms the clerks established and covered all the firms' income and expenses, including those not involving the government or government funds. E.g., Audit of the Majority Printing Clerk, Fiscal Year Ended August 31, 1971, B-164163, June 6, 1972. Similarly, our

audits of the United States Capitol Historical Society, a nonprofit corporation, covered all the Society's revenues and expenses, including contributions. E.g., Audit of the United States Capitol Historical Society For the Year Ended January 31, 1974, B-176631, Nov. 6, 1974. Nor is there anything in section 193m-1 to suggest that Capitol Concerts is outside the scope of section 193m-1 because it "performs services or conducts activities in or on the United States Capitol Buildings or Grounds" by virtue of its agreement with NSO rather than with a congressional agency. In fact, it would frustrate the purpose of section 193m-1 to apply it only to the private organization with the most immediate relationship with Congress since organizations might then be able to limit, if not escape, audit scrutiny through one or more subcontracts.

By its terms, 40 U.S.C. § 193m-1 authorizes GAO to audit "any private organization … which performs services or conducts activities in or on the United States Capitol Buildings or Grounds." Accordingly, for the reasons discussed above, section 193m-1 authorizes GAO to audit the Capitol concert series and to include in that audit the private funds private organizations receive and use to perform services or conduct activities in or on the United States Capitol Buildings or Grounds.

We hope this addresses your request. If we may be of further assistance, please feel free to contact me on (202) 512-5400 or Jeffrey A. Jacobson, Assistant General Counsel, on (202) 512-8261.

Sincerely yours,

Robert P Murphy
General Counsel